

§ 18.94

required by section 103(d) of the Act has been provided, and (3) the Director has made a determination, in the case of State laws and regulations, to approve such State laws and regulations pursuant to section 109(a)(2) of the Act and subpart F of this part.

(b) The provisions of this subpart, unless specifically stated, apply to all taking and/or importation of each species of marine mammal for which the moratorium has been waived other than takings for scientific research or public display, which are governed by § 18.31 of this part, or takings incidental to commercial fishing operations which are governed by § 18.24.

§ 18.94 Pacific walrus (Alaska).

(a) Pursuant to sections 101(a)(3)(A) 103, and 109 of the Marine Mammal Protection Act of 1972, the moratorium on the hunting and killing of Pacific walrus (*Odobenus rosmarus*) in waters or on lands subject to the jurisdiction of the State of Alaska, the United States, or on the high seas by any person, vessel, or conveyance subject to the jurisdiction of the State of Alaska or the United States, is waived, provided that beginning August 2, 1979 this waiver shall not be effective, and no taking or importation under the waiver shall be allowed, until this section is amended to establish regulations to effectively control taking and otherwise implement the waiver.

(b) [Reserved]

[41 FR 14373, Apr. 5, 1976, as amended at 44 FR 45566, Aug. 2, 1979]

Subpart I [Reserved]

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

SOURCE: 58 FR 60410, Nov. 16, 1993, unless otherwise noted.

EFFECTIVE DATE NOTE: At 58 FR 60410, Nov. 16, 1993, subpart J was added to part 18, effective Dec. 16, 1993 through June 16, 1995. At 60 FR 31258, June 14, 1995, the effective date was extended for 60 days through Aug. 15, 1995. At

50 CFR Ch. I (10–1–98 Edition)

60 FR 42805, Aug. 17, 1995, the effective date was further extended through Dec. 15, 1998.

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded.

[58 FR 60410, Nov. 16, 1993, as amended at 60 FR 42809, Aug. 17, 1995]

EFFECTIVE DATE NOTE: At 60 FR 42809, Aug. 17, 1995, § 18.121 was amended by removing “Outer Continental Shelf waters east of” and adding in its place “Outer Continental Shelf waters east of”, effective Aug. 15, 1995 through Dec. 15, 1998.

§ 18.122 Effective dates.

Regulations in this subpart will continue in effect through December 15, 1998, for oil and gas exploration, development, and production activities.

[60 FR 42809, Aug. 17, 1995]

EFFECTIVE DATE NOTE: At 60 FR 42809, Aug. 17, 1995, § 18.122 was revised, effective Aug. 15, 1995 through Dec. 15, 1998.

§ 18.123 Permissible methods.

(a) The incidental, but not intentional, take of polar bear and walrus by U.S. citizens holding a Letter of Authorization (see § 18.128) is permitted for takes resulting from:

(1) Activities associated with conducting geological and geophysical surveys;

(2) Activities associated with drilling exploratory wells and associated activities; and

(3) Activities associated with drilling production wells and performing production support operations.

(b) The methods and activities identified in § 18.123(a) must be conducted in a manner that minimizes to the

greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.”

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

[58 FR 60410, Nov. 16, 1993, as amended at 60 FR 42809, Aug. 17, 1995]

EFFECTIVE DATE NOTE: At 60 FR 42809, Aug. 17, 1995, in § 18.123, paragraph (b) was revised, effective Aug. 15, 1995 through Dec. 15, 1998.

§ 18.124 Prohibitions.

(a) Intentional takes of polar bear or walrus are not authorized by the regulations in this subpart. (Note: Pursuant to section 109(h)(1) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities and/or lethal take) for the protection of human life or welfare.)

(b) Any take that fails to comply with the terms and conditions of the specific regulations in this subpart or of the Letters of Authorization is prohibited.

§ 18.125 Level of activity.

When Letters of Authorization are requested, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, the Service may allow the authorization to stand as is, add further conditions, or withdraw or suspend the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies

what measures have been, and will be, taken to minimize adverse effects on the availability of polar bear and walrus for subsistence uses. The applicant must contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of planned operations. The applicant must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration, development and production activities on polar bear and walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of the activities on polar bear and walrus.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. This plan, which must be approved by the Service's Alaska Regional Director, must identify the survey techniques that will be utilized to determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) If the activity is planned in polar bear habitat, the operator must develop a polar bear awareness and interaction plan subject to approval by the Service. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service may place an observer on site of the activity, on board drillships, drill rigs, aircraft, icebreakers, or other support